

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 316 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PRABHULAL K THAKKAR & ORS.

Versus

STATE OF GUJARAT

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Appearance:

MR VC MEHTA for Petitioners

MR SAMIR DAVE for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/01/97

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioners, Class III and Class IV employees of Bhabhar Gram Panchayat, Ambaji Gram Panchayat, Tharad Gram Panchayat and Dhanera Gram Panchayat, filed this writ petition before this court and prayer has been made for the directions to the respondent-State to make suitable orders under the Gujarat Panchayat Service (Absorption, Seniority, Pay and Allowances) Rules, 1965, as regards

the equivalence of posts, fixation of pay scales for such posts, fixation of the petitioners and persons similarly situated at an appropriate stage in such pay scales and other incidental matters covered by the said Rules and to give effect to such orders from the date of allocation of the petitioners and the other persons similarly situated. Further consequential reliefs have also been prayed for by the petitioners in this Special Civil Application.

2. All the aforesaid Gram Panchayats, as per the case of the petitioners, were constituted in past under the provisions of different legislative enactments. The petitioners have come up with a case that in view of the decision of this court in the case of R.K. Soni vs. State reported in AIR 1977 Guj. 76, which has been confirmed by the Supreme Court, which decision has been reported in 1983 GLH 668, the petitioners were entitled for the benefits of the pay-scales which are being given to the Government servants working on the equivalent posts. The equation of posts, pay-scales etc. are to be done, but it has not been done so far.

3. In view of the reply which has been filed by the respondents, I do not consider it necessary to burden this judgment by giving detailed facts of the case.

4. The respondent has come up with a case that the petitioners are not allocated to Panchayat service, and therefore, cannot be said to be the members of the Panchayat service, and as such, they are not entitled for any of the reliefs asked for by them in this Special Civil Application. It has further been stated that the petitioners are not entitled for the benefits available to other Government employees unless they are allocated to Panchayat service by the Government, and therefore, they cannot be considered to be the members of Panchayat service. Para no.7(4) of the reply is relevant, which reads as under:

As regards para 5 of the petition, I say  
and submit that the G.R. dated 24-6-1983 referred to in this para was issued in compliance of the judgment of the Hon'ble Supreme Court of India which was related only to the employees of erstwhile municipalities allocated to Panchayat service by an order of the State Government. Since the petitioners were not allocated to Panchayat service, the provisions of the above said resolution are not applicable to the petitioners.

5. So the only defence is that unless by an order of

the State Government the petitioners are allocated to the Panchayat Service, they cannot be given the benefit of the Government resolution dated 24th June, 1983. The sum and substance of the defence of the respondent is that unless an order is passed allocating the petitioners to the Panchayat service, they cannot be given any benefit as prayed for in this Special Civil Application. It is really shocking that the respondent has come up with such a technical defence. Even if we go by the acceptance that an order has to be passed by the Government of allocation of the petitioners to the Panchayat service, no reason or ground forthcoming from the reply of the respondent, why this exercise has not been undertaken by the respondent. Once it is a defence of the respondent, then it was obligatory on their part to take into consideration the matter and decide the question of allocation of the petitioners to the Panchayat service. That decision should have been taken in the 80's itself suo motu, instead of forcing these low paid employees to approach this court by way of this Special Civil Application. The State of Gujarat being a welfare State should have acted fairly and reasonably and should have considered whether the benefit of the resolution aforesaid, which has been made admittedly after the decision of this court and confirmed by the Supreme Court, should be extended to the petitioners or not.

6. The only bar to claim the benefits of the aforesaid resolution in the way of the petitioners, as per the case of the respondent, is that the State of Gujarat has not passed a specific order of allocation of these persons to the Panchayat service. I do not want to enter into controversy whether the petitioner could have been allocated to the Panchayat service or not, as the counsel for the respondent very fairly submitted that now this exercise will be undertaken by the State of Gujarat, and it shall pass an appropriate order in accordance with law. The counsel for the petitioners is also agreeable to the aforesaid suggestion made by the learned counsel for the respondent.

7. In the result, this Special Civil Application is disposed of with the direction to the State of Gujarat to decide the matter of allocation of the petitioners to Panchayat service in accordance with law, within a period of three months from the date of receipt of certified copy of this order. In case, the State of Gujarat decides the matter in favour of the petitioners i.e. they are being ordered for allocation to the Panchayat service then they shall be entitled for all the consequential benefits which follows therefrom from the

date of filing of this Special Civil Application i.e. 23rd January, 1984, making it to be a round figure, from 1st January, 1984. In case, the matter is decided against the petitioners, then the respondent-State shall pass a speaking order and a copy of the same may be sent to the petitioners by registered post. This Special Civil Application stands disposed of accordingly in the aforesaid terms. Rule stands disposed of in the aforesaid terms with no order as to costs.

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zgs/-